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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 295

UNITED STATES OF AMERICA, APPELLANT

v.

GEORGE I. WITKOVICH, ALSO KNOWN AS JURI ISADOR WITKOVICH

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinions of the District Court on the original motion to dismiss (R. 7–11) and on the supplemental motion to dismiss (R. 16–25) are reported at 140 F. Supp. 815.

JURISDICTION

On May 10, 1956, the District Court entered an order dismissing the indictment on the ground that it did not allege an offense under Section 242 (d) of the Immigration and Nationality Act of 1952, as the court construed that statute (R. 26). The notice of appeal to this Court was filed in the District Court on

June 8, 1956 (R. 26–27). This Court noted probable jurisdiction on October 8, 1956 (R. 54). Jurisdiction of this Court to review on direct appeal the decision of the District Court dismissing the indictment, based on a construction of the statute on which the indictment was founded, is conferred by 18 U. S. C. 3731.

QUESTION PRESENTED

Whether an alien ordered deported for membership in the Communist Party, who is subject to supervision under Section 242 (d) of the Immigration and Nationality Act of 1952 pending deportation, may be questioned concerning present membership in and activities on behalf of the Communist Party and other organizations and concerning associations with particular individuals, or whether the inquiry authorized by the statute must relate solely to the alien's availability for deportation.

STATUTES AND REGULATION INVOLVED

Section 242 (d) of the Immigration and Nationality Act of 1952, 66 Stat. 163, 208, 211, as amended September 3, 1954, 68 Stat. 1232,[1] 8 U. S. C. (1952 ed. Supp. II) 1252 (d), provides:

> Any alien, against whom a final order of deportation as defined in subsection (c) heretofore or hereafter issued has been outstanding for more than six months, shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations shall include provisions which

[1] This amendment deleted the words "shall upon conviction be guilty of a felony, and" from the list of sanctions set forth in the final sentence.

will require any alien subject to supervision (1) to appear from time to time before an immigration officer for identification; (2) to submit, if necessary, to medical and psychiatric examination at the expense of the United States; (3) to give information under oath as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper; and (4) to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case. Any alien who shall willfully fail to comply with such regulations, or willfully fail to appear or to give information or submit to medical or psychiatric examination if required, or knowingly give false information in relation to the requirements of such regulations, or knowingly violate a reasonable restriction imposed upon his conduct or activity, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

Section 2 of the Internal Security Act of 1950, 64 Stat. 987, 50 U. S. C. 781, provides:

* * * [T]he Congress hereby finds that—

(1) There exists a world Communist movement * * * whose purpose it is * * * to establish a Communist totalitarian dictatorship in the countries throughout the world through the medium of a world-wide Communist organization.

* * * * *

(7) In carrying on the activities referred to in paragraph (6), such Communist organ-

izations in various countries * * * operate to a substantial extent through organizations, commonly known as "Communist fronts", which in most instances are created and maintained, or used, in such manner as to conceal the facts as to their true character and purposes and their membership. * * *

* * * * *

(13) There are, under our present immigration laws, numerous aliens who have been found to be deportable, many of whom are in the subversive, criminal, or immoral classes who are free to roam the country at will without supervision or control.

* * * * *

(15) * * * The Communist organization in the United States, pursuing its stated objectives, the recent successes of Communist methods in other countries, and the nature and control of the world Communist movement itself, present a clear and present danger to the security of the United States and to the existence of free American institutions, and make it necessary that Congress * * * enact appropriate legislation recognizing the existence of such worldwide conspiracy and designed to prevent it from accomplishing its purpose in the United States.

Section 242.3 (c) of the Immigration and Naturalization Regulations, 17 F. R. 11512, as amended June 19, 1953 (18 F. R. 3530) and July 20, 1954 (19 F. R. 4442), 8 C. F. R. 242.3 (c), provides:

(c) *Release; supervision after six months' period has expired: warning of penal provisions.* An alien against whom an order of de-

portation has been outstanding for more than six months shall, pending deportation, be placed under supervision by the district director, deputy district director, or officer in charge having administrative jurisdiction over the office in which the detention or release of such alien was authorized. An alien placed under supervision pursuant to this paragraph shall be advised of the penal provisions of section 242 (d) of the Immigration and Nationality Act. Aliens placed under such supervision shall, among other things, be required to:

(1) Appear from time to time at specified times or intervals before an officer of the Service for identification;

(2) Submit, if necessary, to medical and psychiatric examination at government expense;

(3) Give information under oath as to his nationality, circumstances, habits, associations and activities, and other information whether or not related to the foregoing as may be deemed fit and proper; and

(4) Conform to such reasonable written restrictions on his conduct or activities as may be prescribed.

STATEMENT

Appellee is an alien who was ordered deported because of membership in the Communist Party (R. 27). When the order of deportation was not effected within six months after it had become final, he became subject to the supervision requirements of Section 242 (d) of the Immigration and Nationality Act of 1952, *supra*, pp. 2–3 (R. 1). On March 4, 1954, he was

served with an order of supervision requiring *inter alia* (R. 28–31):

> That said alien shall terminate and remain disassociated from membership in, if any, support or other activity if any, in or in furtherance of the doctrines and policies of, the Communist Party of the United States, the Communist Political Association, the Communist Party of any state, or of any foreign state or of any political or geographical subdivision of any state, any section, subsidiary, branch, affiliate or subdivision of any such group or organization.
>
> That said alien shall refrain from associating with any person, knowing or having reasonable ground to believe that such person is a member of or affiliated with or is engaged in any promotion of any of the activities mentioned in subparagraph above [except member of family or legal counsel].

In October 1955, an indictment was returned against appellee in the United States District Court for the Northern District of Illinois charging a violation of Section 242 (d) of the Immigration and Nationality Act of 1952, in that on September 14, 1954, appellee willfully failed to answer questions and give information as required by the statute, the regulations, and the order of supervision (R. 1–3). The questions which appellee refused to answer included questions as to his membership in the Communist Party and other organizations, attendance at meetings of the Communist Party and other organiza-

tions, and his acquaintance with a number of individuals.[2] Appellee refused to answer the first question

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[2] The questions, set forth in full in the indictment, are as follows (R. 2–3):

(a) Q. Do you subscribe to the Daily Worker?

(b) Q. Mr. Witkovich, can you read in any other language other than Slovene and English?

(c) Q. Since the order of supervision was entered on March 4, 1954, have you at any time visited the office of the "Nardoni Glasnik", 1413 West 18th Street, Chicago, Illinois?

(d) Q. Since the order of supervision was entered on March 4, 1954, Mr. Witkovich, have you ever visited the offices of the Bohemian publication "Nova Dova" or the Slovakian publication "Ludovy Noviny", 1510 West 18th Street, Chicago, Illinois?

(e) Q. Do you know the editor of the "Narodni Glasnik"?

(f) Q. Do you know Leo Fisher?

(g) Q. Do you know Anton Minerich?

(h) Q. Do you know Nick Rajkovich?

(i) Q. Do you know Arsenio Bartl?

(j) Q. Do you know John Zuskar?

(k) Q. Do you know Calvin Brook?

(l) Q. Since the order of deportation was entered in your case on June 25, 1953 have you attended any meeting of the Communist Party of the U. S. A.?

(m) Q. Since the order of supervision was entered on March 4, 1954, have you attended any meeting of any organization other than the singing club?

(n) Q. Have you addressed any lodges of the Slovene National Benefit Society requesting their aid in your case, since the order of deportation was entered June 25, 1953?

(o) Q. Have you distributed petitions or leaflets published by the Slovene National Benefit Society seeking aid for you, in your behalf, in your deportation case since the order of deportation was entered June 25, 1953?

(p) Q. Since the order of supervison have you attended any meetings or lectures at the Peoples Auditorium, 2457 West Chicago Avenue, Chicago, Illinois?

(q) Q. Since the order of supervision was entered against you have you attended any meetings or socials at the Chopin Cultural Center, 1547 North Leavitt Street, Chicago?

(Footnote is continued on next page.)

on the ground that it violated the First Amendment and the remaining questions on grounds of irrelevance. He did not claim the privilege against self-incrimination under the Fifth Amendment (R. 36–37, 39–48).

Appellee moved to dismiss the indictment on the ground, among others, that the statute on which the indictment was founded was unconstitutional (R. 3–7). In an opinion, dated February 15, 1956, the district court upheld the constitutionality of the statute but stated that it interpreted it to confer on the Attorney General "power to supervise the alien to make sure he is available for deportation, and no further power" (R. 10), and that clause (3) of the statute, requiring as one of the conditions of supervision that the alien be required to give information "as to his nationality, circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper", must be read "to mean such information as is necessary to enable the Attorney General to be certain that the alien is holding

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(r) Q. Have you attended any movies since your order of supervision was entered at the Cinema Annex, 3210 West Madison Street, Chicago?

(s) Q. Are you acquainted with an individual named Irving Franklin?

(t) Q. Are you now a member of the Communist Party of U. S. A.?

(u) Q. Are you now or have you ever been a member of the Slovene American National Council?

(v) Q. Are you now or have you ever been a member of the United Committee of South Slavic Americans?

himself in readiness to answer the call to be deported when it comes" (R. 10).

Upon a motion by the government for clarification of the opinion (R. 12) and a supplemental motion by appellee to dismiss the indictment on the ground that it appeared from the face thereof that none of the questions was relevant to availability for deportation (R. 13–16), the court dismissed the indictment (R. 26). In its memorandum opinion, it reaffirmed its previous construction of Section 242 (d) as conferring on the Attorney General powers of supervision only to make certain that the alien will be available for deportation, and by that test found that none of the questions set forth in the indictment was relevant (R. 16–25).

SUMMARY OF ARGUMENT

I

The district court's holding that the questions asked of appellee exceeded the Attorney General's authority was based on the theory that the supervision and questioning of an alien who has been ordered deported can relate only to assurance of his presence for deportation when and if some nation accepts him for deportation. The court's position was based upon a misconception of the language of the statute, which imposes no such limitation, either expressly or by implication, and upon the court's failure to observe the clear congressional intent, evidenced in the legislative history, to assure detection and deterrence of further undesirable subversive conduct of the type that led to the requirement of deportation in the first place.

A. Section 242 (d) of the Immigration and Nationality Act of 1952 provides that an alien against whom a final order of deportation has been issued but whose deportation has not been effected within six months shall be subject to supervision by the Attorney General pending eventual deportation and shall, *inter alia*—

> give information under oath as to his nationality, circumstances, habits, associations, and activities, *and such other information, whether or not related to the foregoing,* as the Attorney General may deem fit and proper * * * [Emphasis added].

There is no restriction in this provision that the information shall relate solely to the availability of the alien for deportation. On the contrary, the wording shows upon its face the effort by Congress to provide for broad supervision.

Moreover, the Court in *Carlson* v. *Landon,* 342 U. S. 524, set forth the guide for ascertaining the purpose, and thus the proper area, for exercise of discretion by the Attorney General under Section 242, employing for that guide the entire structure of the statute, and of the Internal Security Act to which it is closely related. Section 242 provides for custody or bond during the deportation proceedings (subsection (a)) and during the period of six months after the order of deportation (subsection (c)). Moreover, an alien convicted of disobedience of a deportation order (under subsection (e)) may have his sentence suspended upon the basis of considerations which include "the effect of the alien's release upon the national

security and public peace or safety" and "the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable."

This Court had under consideration in *Carlson* v. *Landon*, 342 U. S. 524, *supra*, the criteria for the Attorney General's action under subsection (a)—custody *before* a finding of deportability—and upheld a refusal of the Attorney General to release on bond. The Court, looking to the purposes set forth in the Internal Security Act, in which the provisions here involved had originally been enacted, held that the Attorney General's exercise of discretion could be based on a purpose to "guard against Communist activities pending deportation hearings" (342 U. S. at 544). Similarly, supervision and questioning under Section 242 (d) may be directed to that purpose.

B. The legislative history confirms what is manifest in the language and structure of the legislation. The statute was largely motivated by security problems. In 1939, when a forerunner of the present language was proposed, there was already a beginning of the security problem resulting from the inability to deport undesirables under the then wartime conditions in Europe. Aliens already ordered deported are not subject to the same deterrents as citizens who have their roots in this country or as resident aliens who still cherish the prospect of prolonged stay in the United States or possible citizenship. In the face of the rising demand for an appropriately specific remedy with respect to persons of this particular status, the earlier proposals contemplated detention as well as supervision. The provision for indefinite custody was

eliminated, but the provisions for supervision and interrogation were enacted in 1952 for the express purpose, not only of assuring the presence of the alien when and if deportation became possible, but also—and more importantly—for the purpose of preventing or at least seasonably detecting further undesirable conduct of the aliens already ordered deported.

C. If the statute is construed, as it should be, to permit questioning about harmful activities, the indictment charged an offense, at the very least, by reason of the refusal to answer the questions:

> Since the order of deportation was entered in your case on June 25, 1953 have you attended any meeting of the Communist Party of the U. S. A.?
>
> Are you now a member of the Communist Party of the U. S. A.?

The answers to these questions were of plain importance, in light of the Congress' concern with the Communist Party's hold upon aliens within the United States and the Party's extensive derivation of support from such aliens. Since such activity was the basis of appellee's deportation, the government had the right to limit his further activities in that field and to question him with respect thereto.

II

The District Court's construction of the statute, so at variance with the expressed Congressional intent, is not necessary on the theory that such construction is required to save the constitutionality of the statute. There is no warrant for the assumption by the court

that if the right to question is not limited to availability for deportation the alternative is unfettered discretion in the Attorney General to ask any questions whatsoever. The government's position is that the conditions of supervision, and the right to question with regard to compliance therewith, are limited by the guides set forth in the statute and recognized by this Court in *Carlson* v. *Landon*, 342 U. S. 524. Those guides, however, permit supervision and questioning, not only to assure availability for deportation, but also for control of harmful activities, including activities in support of the Communist Party.

Such supervision involves an element of compulsion considerably less severe than the physical restraint which was considered as an alternative means of protecting the public interest. This limited degree of compulsion, however, presents no such constitutional difficulty as would justify reading the statute contrary to the clear legislative intent. Deportable aliens, who would not be here at all except for the fact that it has proved impossible to deport them, can properly be treated as a special class, subject to the supervision here imposed.

At a time when citizens of the United States (and resident aliens) are subjected, under the selective service system, to much more extensive requirements as to registering, furnishing information, and leaving their homes for training and service, Congress can reasonably authorize a method for maintaining careful, current information as to the activity of an alien

who has been associated with the Communist Party and has, indeed, been ordered deported for that reason. The restraints imposed on this class of aliens are reasonable in relation to the problem.

ARGUMENT

I. AN ALIEN ORDERED DEPORTED BECAUSE OF MEMBERSHIP IN THE COMMUNIST PARTY, BUT UNABLE TO BE DEPORTED AND THEREBY UNDER SUPERVISION OF THE ATTORNEY GENERAL, IS REQUIRED UNDER SECTION 242 (D) OF THE IMMIGRATION AND NATIONALITY ACT OF 1952 TO FURNISH INFORMATION NOT ONLY CONCERNING HIS AVAILABILITY FOR DEPORTATION, BUT ALSO CONCERNING HIS CURRENT COMMUNIST PARTY ACTIVITIES OR ASSOCIATIONS

Section 242 (d) of the Immigration and Nationality Act of 1952, *supra*, pp. 2–3, provides that an alien against whom a final order of deportation has been outstanding for more than six months shall, pending eventual deportation, be subject to supervision under regulations prescribed by the Attorney General. Such regulations, *supra*, pp. 4–5, are required by the statute to include provisions that the alien appear from time to time for identification, that he submit to medical and psychiatric examination if necessary, and that he give information under oath "as to his nationality, circumstances, habits, associations, and activities" and "such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper." The regulations must also require the alien "to conform to such reasonable written restrictions on his conduct or activities as are prescribed by the Attorney General in his case."

It is the position of the government that the foregoing provisions, both in their broad inclusive wording and in their position as a part of a comprehensive statutory structure for safeguarding the internal security of the United States, authorize not merely a mechanism for assuring the continued availability of the alien for deportation, but also a method by means of which the undesirable conduct which led to the alien's deportation in the first place will be detected if repeated during his prolonged stay in the United States. This conclusion is fortified by the legislative history of the statute and prior decisions of this Court.

A. THE BROAD STATUTORY LANGUAGE REQUIRING THE ALIEN TO FURNISH INFORMATION DURING THE PERIOD OF SUPERVISION IS NOT LIMITED, EITHER BY EXPRESS CONDITION OR BY IMPLICATION, TO INFORMATION CONCERNING AVAILABILITY FOR DEPORTATION, BUT ALSO REQUIRES INFORMATION CONCERNING ALL THE OBJECTIVES OF THE SUPERVISION, INCLUDING DETECTION OF FURTHER COMMUNIST PARTY ASSOCIATIONS

The statute is completely devoid of language restricting the purpose of the supervision to assuring the alien's availability for deportation during the period of his stay in the United States after it has developed that the order of deportation cannot be promptly executed. On the contrary, the language, particularly the provision that the alien give "*such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper*" [emphasis added], is of eloquent breadth. By its comprehensiveness, it gives evidence of a purpose to grant the Attorney General broad discretion to draft orders of supervision to meet the difficult situation arising from the fact that aliens already

found undesirable may nevertheless remain in the United States for an indefinite period of time, with the resultant opportunity to continue the very activities which occasioned the orders of deportation, and without the deterrents inherent in a citizen's responsibilities or in a resident alien's fear of deportation.

Moreover, Section 242 (d) is only one of a related group of provisions, involving supervision (and in some instances detention) of an alien thought or adjudged to be deportable, all of which are illumined by Section 2 of the Internal Security Act of 1950, *supra*, pp. 3–4.

Subsection (a) of Section 242 provides that, pending a determination of deportability, the alien may be held in custody, released under bond on "such conditions as the Attorney General may prescribe," or released on parole, such bond or parole to be revocable by the Attorney General "in his discretion".[a] Subsection (c) provides that, upon a final order of deportation, the Attorney General shall have a period of 6 months within which to effect the alien's departure, during which period, "at the Attorney General's discretion", the alien may be detained, released on bond on "such conditions as the Attorney General may prescribe", or released "on such other condition as

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[a] The text of subsection (a) [66 Stat. 208, 8 U. S. C. 1252 (a)] is as follows:

"Pending a determination of deportability in the case of any alien as provided in subsection (b) of this section, such alien may, upon warrant of the Attorney General, be arrested and taken into custody. Any such alien taken into custody may, in the discretion of the Attorney General and pending such final determination of deportability, (1) be continued in custody, or

the Attorney General may prescribe".[4] There follows subsection (d), here involved, providing for the period subsequent to the 6 months period. In this instance the possibly protracted period of the alien's stay is not subject to outright custody, but supervision is continued and requirement is made in the broadest possible statutory terms for the furnishing of information by the alien. The provisions for supervision and the furnishing of information, where there is to be no detention, are therefore quite clearly an attempt to accomplish, in a modified form, the same objectives as would justify absolute detention in the earlier stages of the proceedings. As we discuss more fully below, this Court has already held, in *Carlson* v.

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(2) be released under bond in the amount of not less than $500 with security approved by the Attorney General, containing such conditions as the Attorney General may prescribe; or (3) be released on conditional parole. But such bond or parole, whether heretofore or hereafter authorized, may be revoked at any time by the Attorney General, in his discretion, and the alien may be returned to custody under the warrant which initiated the proceedings against him and detained until final determination of his deportability. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or parole pending final decision of deportability upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to determine deportability."

[4] The pertinent text of subsection (c) [66 Stat. 210, 8 U. S. C. 1252 (c)] is as follows:

"When a final order of deportation under administrative processes is made against any alien, the Attorney General shall have a period of six months from the date of such order, or, if judicial review is had, then from the date of the final order of the court,

Landon, 342 U. S. 524, that a legitimate objective of detention of aliens pending deportation proceedings is to prevent aliens deemed deportable for Communist activities from continuing activities detrimental to the internal security of the United States.

That this is one of the purposes of supervision is made even clearer by subsection (e), making an alien's obstruction of his deportation a felony but providing for the court's suspension of sentence and release of the alien upon taking into account the factors, *inter alia* (66 Stat. 211, 8 U. S. C. 1252 (e)), of:

* * * * *

(2) the effect of the alien's release upon the national security and public peace or safety;

(3) the likelihood of the alien's resuming or following a course of conduct which made or would make him deportable;

* * * * *

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within which to effect the alien's departure from the United States, during which period, at the Attorney General's discretion, the alien may be detained, released on bond in an amount and containing such conditions as the Attorney General may prescribe, or released on such other condition as the Attorney General may prescribe. Any court of competent jurisdiction shall have authority to review or revise any determination of the Attorney General concerning detention, release on bond, or other release during such six-month period upon a conclusive showing in habeas corpus proceedings that the Attorney General is not proceeding with such reasonable dispatch as may be warranted by the particular facts and circumstances in the case of any alien to effect such alien's departure from the United States within such six-month period. If deportation has not been practicable, advisable, or possible, or departure of the alien from the United States under the order of deportation has not been effected, within such six-month period, the alien shall become subject to such further supervision and detention pending eventual deportation as is authorized in this section. * * *."

There is thus apparent within the confines of Section 242 a clear pattern of concern not alone with the alien's availability for deportation, when and if that can be accomplished, but with the danger of harmful conduct meanwhile. The danger specifically mentioned among the criteria set forth in subsection (e) above is assuredly encompassed by the broad discretion granted by the cognate subsection (d).

The government does not contend that the Attorney General may inquire into all phases of the life of an alien subject to supervision. The contention is that he may properly seek to control, and to obtain information as to, the kind of activities which, while deportation was pending, he could validly consider in determining whether to subject an alien to full detention. And in making that determination, before or after the order of deportation, he may properly be guided by the findings in Section 2 of the Internal Security Act of 1950 as to the nature of the Communist movement and the relation of aliens with respect to that movement (*supra*, pp. 3–4).

The relationship between the dangers of Communist activities as set forth by Congress in Section 2 and the protective provisions with respect to deportable aliens has been fully recognized by this Court. In *Carlson* v. *Landon*, 342 U. S. 524, the Court was dealing with the denial of bail by the Attorney General while the deportation proceeding was in progress. At that stage, the prospect of further harmful conduct by the alien was assuredly less than would be the case after the determination of deportability, when—as here—the alien's stake in the United States

has been virtually eliminated by the final determination.[5] In *Carlson* v. *Landon*, as here, it was contended that there was no evidence to justify a fear that the aliens would not be available for deportation (342 U. S. at 534). Mr. Justice Reed, speaking for the Court, adverted to the fact that "aliens arrested for deportation would have opportunities to hurt the United States during the pendency of deportation proceedings" (342 U. S. at 538), and stated, further, in determining whether sufficient standards had been set for the Attorney General's exercise of discretion (342 U. S. at 542–544):

> * * * It is familiar law that in such an examination the entire Act is to be looked at and the meaning of the words determined by their surroundings and connections. * * *
>
> * * * The legislative judgment of evils calling for the 1950 amendments to deportation legislation is set out in the introductory sections of the Subversive Activities Control Act. So far as pertinent to these proceedings, the new legislation was designed to eliminate the subversive activities of resident aliens who seek to inculcate the doctrine of force and violence into the political philosophy of the American people. To this end provision was made for the detention and deportation of certain noncitizens, including members of the

[5] The statutory provision involved in *Carlson* v. *Landon* was Section 20 (a) of the Immigration Act of February 5, 1917 (39 Stat. 890, 54 Stat. 1238, 57 Stat. 553) as amended by Section 23 of the Internal Security Act of 1950 (64 Stat. 1010). Congress by reenacting this provision in the 1952 Immigration Act subsequent to the decision in *Carlson* v. *Landon*, can be considered as approving its interpretation by the Court.

> Communist Party. When in the judgment of the Attorney General an alien Communist may so conduct himself pending deportation hearings as to aid in carrying out the objectives of the world communist movement, that alien may be detained. * * * The authority to detain without bail is to be exercised within the framework of the Subversive Activities Control Act *to guard against Communist activities pending deportation hearings.* * * * [Emphasis added.]

Similarly, Mr. Justice Frankfurter, in his dissent (in which Mr. Justice Burton joined), stated (342 U. S. at 563):

> The factors stated by the Second Circuit in the *Potash* case, *supra*, at 751, which guided the enactment, are presumably the standards which Congress expected to be observed: "The discretion of the Attorney General * * * is to be reasonably exercised upon a consideration of such factors, among others, as the probability of the alien being found deportable, the seriousness of the charge against him, if proved, *the danger to the public safety of his presence within the community*, and the alien's availability for subsequent proceedings if enlarged on bail." [Emphasis added.]

While Mr. Justice Frankfurter concluded that no sufficient danger to the community had been shown in that case (342 U. S. at 564), the dissenting opinion is in accord with the majority opinion of Mr. Justice Reed in looking to the entirety of the statute as guiding the discretionary power of the Attorney General. Both recognize that the statutes, viewed as a whole,

give authority for detention not merely to assure the alien's availability for deportation, but also to prevent further harmful activity by the alien. Those are the criteria which Congress intended to apply to supervision and questioning under Section 242 (d).

B. THE LEGISLATIVE HISTORY CONFIRMS THAT SECTION 242 (D) AUTHORIZES THE DEMAND OF INFORMATION CONCERNING COMMUNIST PARTY ASSOCIATIONS

The legislative history confirms, what the face of the statute reveals, that an important object of the legislation concerning supervision of aliens whose deportation can not be effected promptly is to prevent them from using the period of their stay in this country to the detriment of the internal security of the United States.

As early as 1939, Representative Hobbs advocated legislation for the detention of aliens whose deportation could not be effected, with provision for release upon good cause shown, of which one of the considerations was "(2) the likelihood of the alien's resuming the course of conduct which made him deportable". 84 Cong. Rec. 5179.* The debate then, as later (see *infra*, pp. 24–27), disclosed sharp concern with possible harm to the United States pending deportation. It was in this vein that Representative Hobbs, at this very early stage, strongly declared (see 84 Cong. Rec. 5178):

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* H. R. 4768 and H. R. 5526, 76th Cong., 1st sess., introduced respectively on March 4 and April 4, 1939 (84 Cong. Rec. 5175) were characterized as of the same effect as H. R. 5643, introduced on April 10, 1943. The text of H. R. 5643 appears at 84 Cong. Rec. 5179, 5183, 5189–5191.

> It is said that the present law is sufficient. Sufficient for what? Sufficient to promote continuation of the pollution and poisoning of the blood stream of the body politic of this Nation * * *.[7]

H. R. 5643 was passed by the House (84 Cong. Rec. 5192) but was not reached in the Senate (see 84 Cong. Rec. 9372). A similar bill (H. R. 3) was introduced in the 77th Congress, but did not obtain final consideration.[8] Another bill, H. R. 6333, 80th Cong., 2d sess., introduced by Representative Hobbs on April 26, 1948, did not reach the stage of hearings. However, with H. R. 10, introduced in the 81st Congress, 1st session, more extensive congressional action ensued.[9]

As introduced on January 3, 1949, H. R. 10 provided for detention as well as supervision and, in the section requiring the alien to furnish information, provided that the alien should "give information under oath as to his circumstances, habits, associations, and activities" (p. 4, lines 16–17). When the bill was reported

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[7] The reports (H. Rep. No. 397 and S. Rep. No. 761, 76th Cong., 1st sess.) were very brief but noted: "460 aliens still live in America who, during 1938, were adjudged unfit to remain here * * *. The vast majority of these aliens are as free as any citizen" (page 1 of each report). The minority report recognized the issue, although it noted the lack of evidence that any of these aliens "are a menace to the United States or the peace and safety of our citizens." H. Rep. No. 397, pp. 3–4.

[8] See H. Rep. 284, 77th Cong., 1st sess.; H. Rep. 698 on recommittal, 77th Cong., 1st sess.

[9] S. 1987, a similar bill introduced in the Senate on June 6, 1949, was referred to committee but not acted upon. 95 Cong. Rec. 7218.

by the House committee on August 4, 1949 (H. Rep. 1192, 81st Cong., 1st sess., p. 2), the phrase concerning the furnishing of information was supplemented by the additional, present language:

> and such other information whether or not related to the foregoing as the Attorney General may deem fit and proper; * * *.

The congressional committee reports make no specific reference to this addition, but its comprehensive language is consistent with the numerous expressions, in the reports and hearings, of great concern over the fact that known criminals and Communists, who could not be deported because their countries refused to receive them, were continuing their activities without restraint. Thus, the following appeared in the House committee report (H. Rep. No. 1192, 81st Cong., 1st sess.):

> * * * * The bill will expressly authorize the Attorney General, in his discretion, to hold arrested aliens in custody, or to release them under bond or on conditional parole, pending final determination of their deportability and for a 6-month period after an order of deportation is issued and while such negotiations take place. The bill further provides that among the conditions of any bond exacted, or in the terms of release on parole, there shall be a condition that the alien shall be produced when required for defense against the charges upon which he appears to be deportable and for deportation if he is found subject to that action. A similar provision relates to release on bond or parole for 6 months after the alien has been ordered deported. *These provisions, of course,*

> *enumerate only one of the conditions which is mandatory in the bond or as a parole condition. The bill intends that the Attorney General shall have full discretion in imposing any other conditions or terms in the bond or parole agreement which he may see fit to include.* * * * The bill intends that the Attorney General shall have untrammeled authority to impose such conditions or terms as he sees fit in releasing an alien under bond or conditional parole pending final determination of the deportability of the alien and for 6 months after an order of deportation has been issued against him. * * *
>
> Subsections (b) through (f), inclusive, of section 20 of the 1917 act, as proposed in the bill, introduce a new procedure whereby statutory authority is granted to the Attorney General to *continue* his control over aliens ordered deported * * *. [Pp. 6–7. Emphasis added.]

After reviewing the statistics as to unenforceable orders of deportation, the report states:

> * * * The situation has now become so serious, with every indication that it will increase rather than diminish in importance, that the committee feels that the enactment of legislation of this type is a necessity, *not only to the proper administration of the immigration laws but from the standpoint of the national security of the United States.* [Pp. 7–8. Emphasis added.]

And see the letter of the Attorney General to the committee, cited in the foregoing report at p. 12, and in the Hearings before Subcommittee 1, House Judiciary Committee on H. R. 10, 81st Cong., 1st sess.: "[T]he enactment of legislation of this type is a

necessity, not only to the proper administration of the immigration laws, but from the standpoint of the security of the United States" (p. 6).

The report of the Senate committee on H. R. 10 was subsequent to the outbreak of hostilities in Korea. S. Rep. No. 2239, 81st Cong., 2d Sess., August 3, 1950. The bill had been amended in committee to delete the Attorney General's power to detain for an indefinite period, doubts having been expressed as to the constitutionality of detention (*ibid.* p. 8). The purpose of the bill was restated to be (*ibid.* p. 3):

> so that there may be more effective control over deportable aliens who cannot be deported for reasons beyond the control of the United States.

The report repeated the language of the House committee report *supra* (pp. 24–25) summarizing the effect of the bill as enabling the Attorney General to continue his control over the aliens, setting forth the great number of aliens involved, and stating the serious necessity of the legislation "not only to the proper administration of the immigration laws, but from the standpoint of the national security of the United States". S. Rep. No. 2239, 81st Cong., 2d sess., p. 6.

On August 8, 1950, the President directed a recommendation to the Congress for legislation to protect the internal security of the United States, including a recommendation (H. Doc. No. 679, 81st Cong., 2d sess., p. 5)—

> that the Congress enact legislation permitting the Attorney General to exercise supervision over aliens subject to deportation and to require

> them, under the sanction of criminal penalties, to report their whereabouts and activities at regular intervals. * * *

H. R. 10 was thereupon integrated with other bills to form S. 4037, the Internal Security Act of 1950. S. Rep. No. 2369, 81st Cong., 2d sess., p. 3. The purpose was again stated—as it was also later stated in the conference report—to be "more effective control over deportable aliens". *Ibid.*, p. 14; H. Rep. No. 3112, 81st Cong., 2d sess., p. 59. Significantly, the minority views of the Senate committee embodied no objection to these provisions for control, but characterized them as follows (S. Rep. No. 2369, 81st Cong., 2d sess., Part 2, Minority Views, p. 4):

> * * * Section 23 permits the Attorney General to exercise supervision over aliens subject to deportation and to require them, under the sanction of criminal penalties, to report their whereabouts and activities at regular intervals. These modifications of existing law simply and directly furnish the added measure of *protection* which the existing situation demands. They do so in conformity with the Constitution, and they should be enacted into law. [Emphasis added.]

Similarly, the Presidential veto was not directed against these provisions (H. Doc. No. 708, 81st Cong., 2d sess., p. 3), and a substitute bill proposed by Senators Kilgore, Douglas, Humphrey, Lehman, Graham, Kefauver, and Benton, employed the identical language as to the giving of "information under oath as to [the alien's] nationality, circumstances, habits, associations, and activities, and such other information

whether or not related to the foregoing as the Attorney General may deem fit and proper" (Amendments in the Nature of a Substitute for S. 4037, introduced on September 6, 1950).[10]

The reports indicate that the legislators had before them an array of case histories, including specific examples of a Communist continuing his activity, and of various criminals repeating their offenses (H. R. No. 1192, 81st Cong., 1st sess., pp. 8–9), all attesting the possibility of deportees repeating and continuing their activities. The bill, as passed on September 23, 1950, and, later, as a part of the Immigration and Nationality Act of 1952,[11] was accordingly the product of a clearly expressed purpose, not merely to assure the alien's appearance for deportation, when and if that should become possible, but also, and more importantly, to facilitate supervision of the activities of released deportable aliens. The requirement for information in Section 242 (d) should accordingly be recognized as designedly broad language which should be made effective with respect to the protective purpose indicated by the legislative history. The Attorney General was given broad powers to supervise and gain information which would enable him to make

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[10] There was ample notice to the legislators of the breadth of discretion proposed to be vested in the Attorney General by this legislation. See H. Rep. 1192, 81st Cong., 1st sess., Minority Views, p. 19; Hearings before Subcommittee 1, House Judiciary Committee on H. R. 10, 81st Cong., 1st sess., p. 29 (Statement of Americans for Democratic Action).

[11] H. R. 5678, 82d Cong. 1st sess.; H. Rep. No. 1365, 82d Cong., 2d sess., pp. 30, 58–59; S. 2250 and S. Rep. No. 1137, 82d Cong., 2d sess., p. 31.

certain that aliens who had already been found to be deportable did not use the period of further residence for continuation of detrimental activities.

This, in the minds of the legislators, must have been the objective of the requirement for information as to "circumstances, habits, associations, and activities, and such other information, whether or not related to the foregoing, as the Attorney General may deem fit and proper".

C. THE INDICTMENT CHARGES REFUSAL TO ANSWER QUESTIONS THAT WERE WITHIN THE PROPER SCOPE OF INQUIRY

The indictment which the District Court dismissed charged refusal by appellee to answer 22 questions. Under what we think is the proper construction of the statute, discussed, *supra*, pp. 14–29, the indictment charged an offense, at the very least, by reason of the refusal to answer the two questions:

> Since the order of deportation was entered in your case on June 25, 1953 have you attended any meeting of the Communist Party of the U. S. A.?
>
> Are you now a member of the Communist Party of U. S. A.?

These questions were manifestly of importance to the Attorney General's supervisory duties. Appellee had been ordered deported because of his membership in the Communist Party. The Congress had specifically expressed its concern and enacted special legislation with respect to the problem intrinsic in the Communist Party's hold upon aliens within the United States, and its derivation of support from such aliens (*supra*, pp. 3–4). The Attorney General

had been vested with special authority and a corresponding responsibility to supervise aliens of this class when the potent deterrent of endangering a further stay in the United States had been removed by an order of deportation. An alien, who might otherwise consider that he had little left to lose by actual subversive activity, might yet be deterred by the realization that the likelihood of detection and criminal punishment was now substantially increased since he could be called upon to give an accounting of his current conduct. The fact that an alien might choose to assert the privilege against self-incrimination (no such privilege was here asserted) does not lessen the fact that the information sought was well within the scope of what the Attorney General was entitled to ask.

The remaining questions, concerning acquaintance with certain individuals and concerning possible indirect or direct support of the Party or allied enterprises (*supra*, p. 7, fn. 2), are useful in a determination of the truthfulness of the other questions, in addition to their evidentiary value in disclosing the appellee's activities. Whatever issue may be raised as to any particular question is a matter to be resolved at the trial. All that the Court is required to decide here is whether, under a proper construction of Section 242 (d), the Attorney General may properly direct inquiry to an alien ordered deported concerning his activities in support of the Communist Party. As shown above, Congress clearly contemplated that the Attorney General should have that power.

II. SO INTERPRETED, THE PROVISION FOR SUPERVISION AND QUESTIONING OF ALIENS ORDERED DEPORTED IS CONSTITUTIONAL

The court below seems in part to have reached the result it did on the theory that its construction of Section 242 (d), as limiting supervision to promoting the alien's availability for deportation, was necessary to avoid constitutional issues. And that theory, in turn, seems to rest on the assumption that, if the questioning of the alien is not restricted to the single matter of assuring the alien's presence for deportation, the legislation would "give an official the unlimited right"—an unconstitutional right—to ask "any question the official may decide to ask" (R. 22).

No such assumption is warranted. The alternative to questioning concerning availability for deportation is not unlimited questioning. The proper analysis consists in looking, as the Court did in *Carlson* v. *Landon*, 342 U. S. 524, to the language and purpose of the enactment for the limitations on the Attorney General's discretion.

In *Carlson*, where this Court was examining the very statute here involved, prior to its reenactment in 1952, in relation to the power of the Attorney General to *hold* the alien in actual custody *before* there had even been the finding of the offensive conduct leading to deportability, the Court found a standard in the policy of the Internal Security Act "to guard against Communist activities pending deportation hearings", 342 U. S. at 543–544. See also *supra*, pp. 20–22. *A fortiori*, this Court's language as

to the Attorney General's discretion concerning holding in custody is here applicable to the lesser matter of supervision and inquiry (342 U. S. at 542):

> It is familiar law that in such an examination the entire Act is to be looked at and the meaning of the words determined by their surroundings and connections.

On the basis of the same standard, the government's position is, as stated above, that the supervision and inquiry powers conferred by Section 242 (d) are intended to provide a means, not only to make certain that the alien will be available for deportation, but also to prevent the alien who has been found to be an undesirable resident from using the period of prolonged stay in the United States to continue the very type of activities which rendered him deportable.

This does involve a certain degree of compulsion, not imposed upon ordinary resident aliens or citizens except to the degree that the harmful conduct may also be a crime. But the compulsion is much less severe than that involved in actual detention which was considered by Congress as an alternative means of protecting the public interest. To the limited extent that this compulsion raises a constitutional issue, it is the same issue which was before this Court in *Nukk* v. *Shaughnessy*, 350 U. S. 869, and not there decided. Congress has expressed its view of the constitutionality of this provision thus (H. Rep. 1192, 81st Cong., 1st Sess., p. 10, referring to the statute when it still had a provision for complete detention):

> The committee feels that aliens illegally here are not necessarily entitled to enjoy precisely the same privileges as those who are lawfully resident, merely because of the inability of this Government to carry out its policy to rid the country of their presence in conformity with law. If deportation proves impossible, it seems reasonable that subversive, criminal, immoral, and other undesirable persons should be subject to supervision and control by the Government in order that their activities and conduct may be known.

Several considerations are of importance in support of this congressional position. First, it is to be kept in mind that appellee at no point contends that he is not rightfully being deported, nor does he claim that the administrative proceedings in which he was ordered deported were procedurally defective or unlawful in any manner. The status of appellee as an undesirable alien under order of deportation is accordingly clear and uncontroverted. Secondly, this status sets appellee substantially apart from citizens and other resident aliens. While Congress has determined that he should not be here, he is in fact here and may remain for some period of time. His status is closer to that of an excluded alien on parole than it is to the ordinary resident alien. If, as must be conceded, Congress has the power to expel him from the country entirely, it must have the power to deal with the situation presented by the inability to effectuate deportation.

The power of Congress with respect to aliens is recognized as extremely broad. So long as aliens fail

to become naturalized, they "remain subject to the plenary power of Congress to expel them under the sovereign right to determine what noncitizens shall be permitted to remain within our borders." *Carlson* v. *Landon,* 342 U. S. 524, 534, citing *Nishimura Ekiu* v. *United States,* 142 U. S. 651, 659; *Fong Yue Ting* v. *United States;* 149 U. S. 698, 707; *Bugajewitz* v. *Adams,* 228 U. S. 585; *Ng Fung Ho* v. *White,* 259 U. S. 276, 280; *United States* v. *Curtiss-Wright Export Corp.,* 299 U. S. 304, 318; *Eichenlaub* v. *Shaughnessy,* 338 U. S. 521, 528; III Hackworth's *Digest of International Law* 725 (1942). See also *Galvan* v. *Press,* 347 U. S. 522. The action here involved is merely supplemental to this far more drastic procedure, the constitutionality of which is beyond question.

The legislative and executive branches of the government are confronted with concrete, actual problems. Not only does a person in appellee's status have an unusually strong motivation to disappear into the general population of the country in order to avoid deportation, but in addition such an alien, with deportation having been ordered, is relieved of one of the deterrents—and perhaps the most potent deterrent—to further support of the Communist Party, *i. e.,* the fear of deportation. The authorities cannot discharge the responsibility resting upon them by a mere acceptance of the assurances of deportee aliens that they will not participate in subversive activities. It is reasonable to restrict the aliens' associations with or employment by members of the Communist Party, and to permit inquiry as to

whether such limitations are being observed. At a time when it remains necessary to call citizens into the armed forces of the nation, involving for such citizens grave impact upon their customary liberties, it is not unreasonable to provide for supervision of aliens whose past record discloses a contribution to the source of the current danger.

The short of it is that the special status of deportable aliens who have not yet been deported justifies some form of special treatment. The treatment specified by Congress, which is not detention but limited supervision, is reasonable. Supervision which is substantially less burdensome than that normally imposed on members of the armed forces cannot be equated to a real administrative deprivation of liberty such as the imprisonment and hard labor provision of *Wong Wing* v. *United States,* 163 U. S. 228, referred to by the court below. Appellee, who after full and fair hearings has been found undesirable as a permanent resident of the United States, is a part of a group more properly comparable to excludable aliens than to the ordinary resident alien. The limited supervisory precautions taken with respect to him, to the restricted extent that they may affect his liberty, are justified by his special position in our society and the counterbalancing necessity to prevent or at least warn of further conduct harmful to the United States.